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OFFICE OF PETITIONS

In re Application of :
Christophe Lefevre :
Application No. 09/836,158 : ON PETITION
Filed: 17 April, 2001 :
Att'y Docket No. KOB 18 :

This is a decision on the petition under 37 CFR 1.137(b),¹ filed on 19 January, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is not a final agency decision.

This application became abandoned on 23 August, 2003, for failure to file a proper reply to the final Office action mailed on 22 May, 2003, which set a three (3) month shortened statutory period for reply. On 3 November, 2003 (certificate of mailing date 22 October, 2003), petitioner submitted a Notice of Appeal and a two (2) month extension of time. The Notice of Appeal and extension of time fees, however, were paid in the small entity amount while no assertion of small entity status had ever been filed. On 5 March, 2004, petitioner filed a statement of small entity status along with a petition for extension of the time to reply to the Notice of Appeal petitioner attempted to file on 22 October, 2003.

On 27 July, 2004, a Notice of Allowance and Issue Fee Due was mailed, requiring payment of the issue fee in the large entity amount, and the publication fee. On 26 October, 2004, petitioner submitted payment of the issue fee in the small entity amount, and payment of the small entity amount.

On 14 December, 2004, a Notice of Abandonment was mailed for failure to timely pay the issue fee.

On 28 December, 2004, a Notice of Withdrawal from Issue was mailed, stating the application was being withdrawn from issue because of the fee deficiency.

Petitioner asserts that \$395.00 was paid on 8 October, 2004, to complete the large entity fees for the Notice of Appeal and extension of time petitioner attempted to file on 3 November, 2003. Petitioner states that the request to apply this amount to the fee deficiency was denied, and requests that this amount be applied towards the petition fee of \$750.00. Petitioner has submitted an additional \$355.00 with the present petition.

The petition is dismissed because the proper petition fee has not been paid. The Office acknowledges receipt of the \$395.00 paid on 8 October, 2004. A petition under 37 CFR 1.137(b) must be accompanied by a proper reply, and the \$395.00 is indeed required to complete the large entity fees for the Notice of Appeal and two (2) month extension of time submitted in response to the

final Office action and make the Notice of Appeal and extension of time a proper reply. As such, the petition fee is required in full in order to revive this application. In order for the petition under 37 CFR 1.137(b) to be grantable, petitioner must submit the balance due (currently \$395.00) to complete the petition fee.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
 Customer Service Window
 Mail Stop Petition
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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